

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs January 24, 2007

**IN RE C.M.C., ET AL.**

**Appeal from the Juvenile Court for Claiborne County  
No. J8282     Darryl W. Edmondson, Judge**

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**No. E2006-01254-COA-R3-PT - FILED MARCH 13, 2007**

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M.L. (“Mother”) appeals the trial court’s decision terminating her parental rights. We hold that the evidence does not preponderate against the trial court’s finding by clear and convincing evidence that the statutory grounds for termination found at Tenn. Code Ann. § 37-2-403(a) and § 36-1-113(g) existed, and that termination was in the best interest of the children. Consequently, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed**

SHARON G. LEE, J., delivered the opinion of the court, in which HERSCHEL PICKENS FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Robert Scott, Jacksboro, Tennessee, for the Appellant, M.L.

Robert E. Cooper, Attorney General and Reporter, and Elizabeth C. Driver, Assistant Attorney General, Nashville, Tennessee, for the Appellee, State of Tennessee, Department of Children’s Services.

**OPINION**

***I. Background***

This appeal involves the termination of the Mother’s parental rights as to her six children. The children were found to be dependent and neglected and placed into the custody of the Tennessee Department of Children’s Services (“DCS”) on October 31, 2003, due to allegations that R.L. (“Father”), the father of the four youngest children and stepfather of the oldest two, had sexually abused his minor niece, who at the time lived nearby. Shortly after DCS took custody, a DCS child protective services investigation revealed that Father had likely also sexually abused his stepchildren and oldest child, then ages 11, 9, and 5½. As soon as the allegations against Father surfaced and the children were removed, Father disappeared and went into hiding.

On November 12, 2003, a permanency plan was developed for each of the six children at a meeting with DCS. Mother was involved in the meeting and signed the plans. Leslie England, a DCS case manager who helped draft the permanency plans, testified that at that time Mother stated that “she couldn’t believe that [Father] did it” and that Mother “was willing to do whatever she had to do to get her children back.” The permanency plans provided a goal of reunification, and in order to work toward that goal, Mother was required, among other things, to: (1) demonstrate that she will protect her children from all types of abuse and neglect, and not allow contact between her children and any alleged perpetrators; (2) schedule an appointment for a mental health assessment within two weeks, addressing the issues regarding the abuse allegations against her husband; (3) address emotional issues and distress in counseling and follow all recommendations of the therapist and of DCS; (4) participate in parenting classes to develop skills to manage six minor children, and demonstrate that she can provide adequate care, supervision, and age appropriate discipline; (5) obtain and maintain stable employment, and demonstrate that she can provide financially for her children; and (6) contact law enforcement and DCS to provide any new information regarding the whereabouts of Father. The permanency plans expressed the concern that Mother “has expressed support of [Father] and has not shown that she will be protective of her children.”

Two months after the permanency plans were developed and signed, both Mother and Father signed a lease application in Kentucky, and listed all six children as potential residents on the lease documents, even though the children were in the custody of DCS. The Kentucky public housing authority provided Mother and Father an apartment unit large enough to house the children. Mother admitted that she lived with Father until at least March of 2004, and that she had lied under oath at a hearing when she denied knowing Father’s whereabouts. DCS produced evidence showing that one month after she signed the permanency plans, Mother was, on December 15, 2003, with Father in Kentucky trying to find an apartment.

Ms. England testified that from November 2003 until March 2004, Mother did not present evidence to her that Mother had done anything to fulfill her obligations under the plans except attend visitations with the children. Mother completed parenting classes on August 31, 2004. Mother maintained employment at various jobs following the children’s removal, but her housing situation was unstable; she lived in at least three residences. Mother had still not completed a mental health assessment, as required by the plans, in March of 2005.

On September 17, 2004, revised permanency plans were developed that noted that the children had been in DCS custody for 11 months and that termination of Mother’s parental rights must be considered. On March 18, 2005, DCS filed a petition to terminate Mother’s parental rights, alleging her substantial noncompliance with the permanency plans, persistence of conditions that led to the children’s removal and little likelihood that the conditions will be remedied at an early date, and that termination was in the children’s best interest.

Following a hearing on DCS’ petition on September 8, 2005, the trial court entered an order staying its ruling on the petition, essentially giving Mother more time to comply with the parenting plans. The trial court stated that it was following the suggestion and conclusion of DCS’ expert

witness, Dr. Gary B. Verna, who had been involved in assessing Mother's case and condition, and who recommended that a plan of mental health therapy for Mother be developed and implemented, with the goal of giving her another chance to work toward reconciliation with her children. Pursuant to the trial court's order, Dr. Verna submitted a written plan of recommended steps and contingencies for Mother's therapy.

In its order staying its decision, the trial court clearly expressed its concern for the children's safety with Father at large, and its concern over the possibility that Mother had been in contact with Father and knew where he was hiding. The trial court reiterated to Mother her obligation to report Father's whereabouts to DCS and law enforcement if she had any such information. The trial court scheduled a hearing for mid-March of 2006 to review Mother's progress and to rule on the petition.

At that hearing, held on March 15, 2006, DCS presented the testimony of Detective Rick Davis of the Claiborne County Sheriff's Department. Detective Davis testified that he visited Mother's residence on March 2, 2006, and at the end of a two-hour conversation with Mother, she gave him a key from her key ring and told him it was the key to the residence in Kentucky where Father was staying. Mother gave Detective Davis directions to the residence and a detailed description of the residence. Detective Davis drove to the Kentucky residence that day and determined that Father had been living there and that the key worked in the door to the residence. The owner of the residence, Father's cousin, stated that Father had just left for the grocery store. Father did not return. Detective Davis stated that he was concerned that Mother had been in contact with Father recently and that she tipped Father off to Detective Davis' visit.

Based on the proof presented at both hearings, the trial court ruled that DCS had proven by clear and convincing evidence the grounds for termination alleged in its petition, and that termination was in the best interest of the children.

## ***II. Issues Presented***

Mother appeals, raising the following issues for review:

1. Whether the trial court erred in holding that DCS proved by clear and convincing evidence that statutory grounds for terminating Mother's parental rights existed.
2. Whether the trial court erred in holding that termination of Mother's parental rights was in the best interest of the children.

## ***III. Standard of Review***

A biological parent's right to the care and custody of his or her child is among the oldest of the judicially recognized liberty interests protected by the due process clauses of the federal and state constitutions. *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *Hawk v. Hawk*, 855 S.W.2d 573, 578-79 (Tenn. 1993); *Ray v. Ray*, 83 S.W.3d 726, 731 (Tenn. Ct. App. 2001). Although this right is

fundamental and superior to claims of other persons and the government, it is not absolute. *State v. C.H.K.*, 154 S.W.3d 586, 589 (Tenn. Ct. App. 2004). This right continues without interruption only as long as a parent has not relinquished it, abandoned it, or engaged in conduct requiring its limitation or termination. *Blair v. Badenhope*, 77 S.W.3d 137, 141 (Tenn. 2002). Although “parents have a fundamental right to the care, custody, and control of their children,” this right is not absolute and parental rights may be terminated if there is clear and convincing evidence justifying such termination under the applicable statute. *In re Drinnon*, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988) (citing *Stanley v. Illinois*, 405 U.S. 645 (1972)).

Terminating parental rights has the legal effect of reducing the parent to the role of a complete stranger, “severing forever all legal rights and obligations of the parent.” T.C.A. § 36-1-113(l)(1). The United States Supreme Court has recognized the unique nature of proceedings to terminate parental rights, stating that “[f]ew consequences of judicial action are so grave as the severance of natural family ties.” *M.L.B. v. S.L.J.*, 519 U.S. 102, 119, 117 S.Ct. 555, 565, 136 L.Ed.2d 473 (1996) (quoting *Santosky v. Kramer*, 455 U.S. 745, 787, 102 S.Ct. 1388, 1412, 71 L.Ed.2d 599 (1982) (Rehnquist, J., dissenting)). As a result, “[t]he interest of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment.” *Id.* The constitutional protections of the parent-child relationship require certain safeguards before the relationship can be severed. *O’Daniel v. Messier*, 905 S.W.2d 182, 186 (Tenn. Ct. App. 1995). This most drastic interference with a parent’s rights requires “the opportunity for an individualized determination that a parent is either unfit or will cause substantial harm to his or her child before the fundamental right to the care and custody of the child can be taken away.” *In re Swanson*, 2 S.W.3d 180, 188 (Tenn. 1999).

Termination proceedings are governed by statute in Tennessee. Parties who have standing to seek the termination of a biological parent's parental rights must first prove at least one of the statutory grounds for termination. Tenn.Code Ann. § 36-1-113(c)(1). Secondly, they must prove that termination of the parent's rights is in the child's best interest. Tenn. Code Ann. § 36-1-113(c)(2). Because the decision to terminate parental rights has profound consequences, courts must apply a higher standard of proof in deciding termination cases. Therefore, to justify termination of parental rights, the party seeking termination must prove by clear and convincing evidence the ground (or grounds) for termination and that termination is in the child's best interest. Tenn. Code Ann. § 36-1-113(c); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002).

The heightened burden of proof in parental termination cases minimizes the risk of erroneous decisions. *In re C.W.W.*, 37 S.W.3d 467, 474 (Tenn. Ct. App. 2000); *In re M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). Evidence satisfying the clear and convincing evidence standard establishes that the truth of the facts asserted is highly probable, *State v. Demarr*, No. M2002-02603-COA-R3-JV, 2003 WL 21946726, at \*9 (Tenn. Ct. App. M.S., Aug. 13, 2003), *no appl. perm. filed*, and eliminates any serious or substantial doubt about the correctness of the conclusions drawn from the evidence. *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002); *In re S.M.*, 149 S.W.3d 632, 639 (Tenn. Ct. App. 2004); *In re J.J.C.*, 148 S.W.3d 919, 925 (Tenn. Ct. App. 2004). It produces in a fact-finder's mind a firm belief or conviction regarding the truth of the facts sought to be established.

*In re A.D.A.*, 84 S.W.3d 592, 596 (Tenn. Ct. App. 2002); *Ray v. Ray*, 83 S.W.3d 726, 733 (Tenn. Ct. App. 2001); *In re C.W.W.*, 37 S.W.3d at 474.

In a non-jury case such as this one, we review the record *de novo* with a presumption of correctness as to the trial court's determination of facts, and we must honor those findings unless the evidence preponderates to the contrary. Tenn. R. App. P. 13(d); *Union Carbide v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993). When a trial court has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, considerable deference must be accorded to either as to the trial court's factual findings. *Seals v. England/Corsair Upholstery Mfg. Co., Inc.*, 984 S.W.2d 912, 915 (Tenn. 1999). The trial court's specific findings of fact are first reviewed and are presumed to be correct unless the evidence preponderates against them. We then determine whether the facts, as found by the trial court or as supported by the preponderance of the evidence, clearly and convincingly establish the grounds for terminating the biological parent's parental rights. *In re S.M.*, 149 S.W.3d 632, 640 (Tenn. Ct. App. 2004). The trial court's conclusions of law are reviewed *de novo* and are accorded no presumption of correctness. *Campbell v. Florida Steel Corp.*, 919 S.W.2d 26, 35 (Tenn. 1996); *Presley v. Bennett*, 860 S.W.2d 857, 859 (Tenn. 1993).

#### ***IV. Analysis***

##### ***A. Substantial Noncompliance With Permanency Plan***

We first address whether the trial court erred in finding that there was a statutory ground for terminating Mother's parental rights. As long as one statutory ground for termination is established by the facts in this case and termination is in the best interest of the children, the trial court's decision will be sufficiently supported. *In re D.L.B.*, 118 S.W.3d 360, 367 (Tenn. 2003).

Regarding the issue of whether DCS established statutory grounds by its presented evidence, we note at the outset the comments made by Mother's counsel at the close of the March 15, 2006 hearing:

I think what's probably been proven is that [Mother's] not, you know, demonstrated to the Court in a timely fashion that things have made progress to remedy the reason they came into custody in the first place. *So you'd have the grounds there.* I don't excuse that. But you still have to have that second prong of the test that it's in the children's best interest to terminate.

And I realize, you know, we have [a] time frame that say[s] we need to get them adopted as quick as possible. But it's still got to be in their best interest. *And I would ask the Court to consider, you know, find that there are grounds to terminate.* The Court may have done that already actually last time. I wouldn't say for sure. But say, you know, reserve judgment on best interest and allow her continued supervised contact...

We are of the opinion that in a case not involving the termination of parental rights, the above statements would support and justify a finding by this court that Mother abandoned and waived her argument at the trial level as regards statutory grounds to terminate, and therefore did not properly preserve it for appeal, and our analysis would end with that finding. Because of the magnitude and significance of the consequences here, however, we have carefully reviewed the evidence in the record, remaining mindful of the above-quoted concessions by Mother, and we find the evidence supports the judgment of the trial court.

The trial court terminated Mother's parental rights based upon its finding, among other things, that Mother failed to comply with her responsibilities under the permanency plan, a written document which sets out the requirements to achieve family reunification or other appropriate goals. Tenn. Code Ann. §§ 37-2-402(8), -403(a)(1). Parental rights may be terminated upon proof, by clear and convincing evidence, that "[t]here has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan or a plan of care..." Tenn. Code Ann. § 36-1-113(g)(2). The requirements must be stated in specific terms and must be reasonably related to the specified goal. Tenn. Code Ann. § 37-2-403(a)(2)(A).

To prevail in a termination case on a claim of substantial noncompliance with a permanency plan, DCS must prove: (1) the terms of the plan, *Dep't of Children's Services v. D.W.J.*, No. E2004-02586-COA-R3-PT, 2005 WL 1528367 (Tenn. Ct. App. E.S., June 29, 2005); (2) that the plan requirements were reasonable and related to remedying the conditions that caused the child to be removed from the parent's custody in the first place, *In re Valentine*, 79 S.W.3d at 547; *In re L.J.C.*, 124 S.W.3d 609, 621 (Tenn. Ct. App. 2003); and (3) that the parent's noncompliance was substantial in light of the degree of noncompliance and the importance of the particular requirement that has not been met. *Valentine*, 79 S.W.3d at 548-49; *In re Z.J.S.*, No. M2002-02235-COA-R3-JV, 2003 WL 21266854, at \*12 (Tenn. Ct. App. M.S., June 3, 2003); *Dep't of Children's Services v. T.M.B.K.*, 197 S.W.3d 282, 293 (Tenn. Ct. App. 2006). Minor, trivial, or technical deviations from a permanency plan will not be deemed to amount to a substantial noncompliance. *In Re M.J.B.*, 140 S.W.3d 643, 656-57 (Tenn. Ct. App. 2004).

In the present case, it is not disputed that elements (1) and (2) as restated above have been met by DCS. One of the requirements of the original permanency plans was that Mother schedule an appointment for a mental health assessment within two weeks, addressing the issues regarding the abuse allegations against Father. This requirement is significant because the medical experts who testified in this case concurred that, in Dr. Verna's words, Mother "presents with significant interfering psychosocial and emotional issues that, especially in regard to self-deception and poor reality testing, increase the risk of [her] being unable to provide a secure and stable household." Specifically, the testimony of Mother herself and of other witnesses at the hearing consistently suggests that Mother has been unable or unwilling to accept the fact of Father's sexual abuse of her children. Mother had failed to obtain a satisfactory mental health assessment by the time of filing of DCS' petition, some 15 months after she signed the permanency plans.

Further, as already noted, one of Mother's DCS case workers testified that from early November 2003 to March 2004, Mother did not "do anything to work on this plan and present [her] with evidence that [Mother] has done other than visitation." As the children's guardian ad litem stated in his argument supporting termination, "for the first critical four months of this case [Mother's] in Kentucky with [Father]." Finally, as discussed further in Section B below, it is undisputed that Mother was continually in noncompliance with the requirement that she provide DCS and law enforcement with information regarding Father's whereabouts, as Father was a fugitive on the TBI's most wanted list for the alleged sex crimes against multiple children. We hold that the trial court did not err in finding there had been substantial noncompliance by Mother with the statement of responsibilities in the permanency plans.

*B. Removal for Six Months and Failure to Remedy Conditions*

The second ground relied on by the trial court to terminate Mother's parental rights was Tenn. Code Ann. § 36-1-113(g)(3)(A), which requires DCS to prove that:

- (3)(A) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:
  - (i) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;
  - (ii) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and
  - (iii) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home.

Tenn Code Ann. § 36-1-113(g)(3)(A); *see also In re Audrey S.*, 182 S.W.3d 838, 871 (Tenn. Ct. App. 2005).

The reason the children were removed is the allegation that Father had sexually abused his niece, who was then fifteen years old but who reported that the abuse had occurred since she was about eight, and who lived in the same neighborhood as Mother and Father. Jason Dockery, an investigator for DCS child protective services, testified that Father had been investigated on four separate previous occasions in several states for sexual abuse of his niece and of C.M.C., his oldest stepdaughter. Mother and Father were married and living together during all of these investigations except the first. Mr. Dockery testified that during the initial interview process with Mother and with Father's sister, "they were very deceptive, they were very manipulative, and I caught them in several lies by omission and commission, and I was just very uncomfortable with the situation as is." Both Mr. Dockery and case manager England testified that Mother lied to them in stating that there had

been no prior involvement with law enforcement or child protective services regarding sexual abuse allegations.

Mr. Dockery presented evidence that Father's abuse of the children occurred frequently, over a long duration, and at times in the home when Mother and the rest of the family were in the house while it was occurring. In one incident that occurred in Kentucky, Mother and Father took C.M.C., then approximately five years old, to the emergency room for a vaginal injury that required surgery and resulted in permanent damage. The explanation given by Mother and Father was that C.M.C.'s brother had "shoved her down on a stick."

Dr. Verna, a licensed psychologist, evaluated Mother's mental health situation in the summer of 2005, meeting with her on five occasions. Dr. Verna testified as follows regarding his observations and conclusions:

Q: Had she ever come forth and [said], [Father], my husband of seven years, abused our children or my children?

A: Or words to that effect. No, I thought that was a bit unusual. What she said was because I raised the question about here's the man you love on the one hand and here's your children on the other, and she said that, you know, I have no reason to believe that my children lie. What was the – it wasn't so much what was said to me as what wasn't said to me. It's a situation where, typically, you get a pretty strong response.

Either someone's very upset with the husband who abused their child, or they align with the husband against the children. Especially, if the children are older. But [what] I got was this sort of bland statement to the effect that I have no reason to believe my children would lie. What I was expecting was some indication she aligned with the children against these abuses toward them or that she just didn't believe that it happened and it seemed like she sort of hit limbo as to what this – what all of this meant to her. And I thought that was unusual.

\* \* \*

[M]y interpretation was that she didn't – either she doesn't believe he did this or that she's unable to disconnect with one relationship with her ex-husband<sup>1</sup> emotionally and connect with her children in a defensive fashion...I was concerned about what appeared to me to be some indications that there may still be a relationship with her ex-husband on the one hand, and then wanting her children back.

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<sup>1</sup> Mother filed for divorce on April 22, 2005, after the termination petition had been filed. Dr. Verna testified that "my sense was that it was a reluctant divorce."



Dr. Verna testified that Mother did not demonstrate or articulate any plan to protect the children from further abuse.

The trial court, after hearing and considering the above-described evidence, among many other things, stayed its decision for a period of approximately six months in order to provide Mother another opportunity to obtain counseling and therapy, and to comply with the requirements of the permanency plans and Dr. Verna's recommendations. In statements from the bench, the trial court admonished Mother directly and clearly as follows:

The Court is going to instruct...Dr. Verna, no later than the end of this month, to submit written findings as to the procedure he thinks should be put in place to give the mother the attempt to be reunited with her children...Those will be absolutely, positively, unequivocally, strictly enforced. There will be absolutely no continuances from that time.

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And the Court is also going to have to be very very comfortable that [Father's] not going to show up. Because...I hear that still small voice in the back of my head about, you know, about [Father] and where he is at.

GUARDIAN AD LITEM: I would just ask in that context, Your Honor, that whatever provisions of no contact, all that just remain in effect.

THE COURT: The no contact remains. And if [Father's] whereabouts are known, they are to be immediately reported.

GUARDIAN AD LITEM: To?

THE COURT: Department of Children's Services and counsel.

MOTHER'S ATTORNEY: And the Sheriff's Department.

THE COURT: And the Sheriff's Department. So you understand that if someone comes in here, and they can convince this Court that you knew where [Father's] at, that can be a deal killer for you, ma'am. Because I've seen what happened to these children, and you've seen what's happened to these children, and those photographs are in the evidence. And it's time for [Father] to be called upon to appear before who he needs to appear on.

At the March 15, 2006 hearing, Dr. Verna reviewed Mother's progress in therapy, noted that Mother had attended seven of the eleven scheduled sessions, and stated, "I didn't feel that at this point that I heard anything or read anything that suggested that she had addressed those issues that needed to be addressed that would make her able to protect her children from the possibility of abuse." Dr. Verna further testified that his concern was that Mother "had not fully resolved the issue of her children having been sexually abused by her estranged husband; that perhaps she still believed that he didn't do the things that were alleged that he did; that her ability to protect these children from this individual or other potential abusers is compromised."

In addition, DCS presented the testimony of Detective Davis, as already mentioned, who stated that after some two hours of conversation in her house on March 2, 2006, Mother provided him with a key to the residence where Father was staying, and gave him directions and a detailed description of the dwelling. Detective Davis testified that Mother told him that Father had given her the key in 2004. Mother disputed this testimony, stating that she had unexpectedly encountered Father at a gas station in Kentucky some two weeks earlier, and that he had threatened and assaulted her, and given her the key then. The trial court, however, did not find Mother a credible witness at either hearing.

As regards Tenn Code Ann. § 36-1-113(g)(3)(A)(iii), requiring DCS to prove that the continuation of the parent and child relationship greatly diminishes the children's chances of early integration into a safe, stable and permanent home, the children's foster parents testified at the first hearing, and stated that the children are generally doing well in foster care and that the foster parents would like to adopt the children. We hold that the trial court did not err in finding by clear and convincing evidence that the grounds for termination found at Tenn Code Ann. § 36-1-113(g)(3)(A) were proven here, and the trial court did not err in terminating Mother's parental rights upon those grounds.

### *C. Best Interest of the Children*

In addition to finding by clear and convincing evidence that at least one statutory ground exists to terminate parental rights, the court must also find that the termination is in the children's best interest. Tenn. Code Ann. § 36-1-113(c)(2). To make the latter finding, the court shall consider, but is not limited to, the following:

- (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
- (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
- (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
- (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
- (5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;

(6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;

(7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or

(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

Tenn. Code Ann. § 36-1-113(i). Further, as this court stated in *In re Audrey S.*,

[A]scertaining a child's best interests in a termination proceeding is a fact-intensive inquiry requiring the courts to weigh the evidence regarding the statutory factors, as well as any other relevant factors, to determine whether irrevocably severing the relationship between the parent and the child is in the child's best interests.

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Ascertaining a child's best interests does not call for a rote examination of each of Tenn. Code Ann. § 36-1-113(i)'s nine factors and then a determination of whether the sum of the factors tips in favor of or against the parent. The relevancy and weight to be given each factor depends on the unique facts of each case. Thus, depending upon the circumstances of a particular child and a particular parent, the consideration of one factor may very well dictate the outcome of the analysis.

*In re Audrey S.*, 182 S.W.3d at 878.

As is evident from the discussion and analysis contained in sections IV(A) and (B) above, Mother's ability to protect the children from danger of further abuse is subject to serious question. Marguerite Lee, a licensed master social worker and therapist with Child and Family Services who counseled the three oldest children, testified that they each loved their Mother and wanted to be with

her, but that none of them feels safe with her, and that “all three of them have reported to me that they are worried they will have some sort of contact with [Father]” if they return to Mother’s custody. Ms. Lee testified that the children are extremely fragile, and require an extremely stable and consistent environment.

Further, Dr. Verna testified as to the results of a family perception test he administered to the older children, which indicated their perceptions of the strengths and weaknesses of the family unit relationships. The test indicated that “these kids were pretty much truthful and straightforward about their perceptions of how this family works and how their relationship with their mother works,” and the results indicated that “there’s no place here where these kids indicate that this family is – has any strengths as a family, any functional strengths as a family.” The tests did indicate a serious level of dysfunction in several areas of family life with Mother.

The children have now been in foster care for approximately three years and four months, and have bonded with the foster parents who want to adopt them. This court has previously held that a lengthy delay in a child's return to the custody of its biological parent is a strong indication that termination of parental rights is in the best interest of the child, stating as follows:

This court has frequently and for a long time recognized that, as a general proposition, a child's best interest was served by termination of parental rights where, no matter the cause, there was no reasonable expectation the child could be reunited with a parent in the near future.... Termination of parental rights is a prerequisite to adoption which brings with it the security and stability that is of primary importance to children.

*In re M.H.*, No. M2005-00117-COA-R3-PT, 2005 WL 3273073, at \*13 (Tenn. Ct. App. M.S., Dec. 2, 2005); *In re M.L.P.*, No. E2006-01492-COA-R3-PT, 2007 WL 247702, at \*6-7 (Tenn. Ct. App. E.S., Jan. 30, 2007).

At the close of each hearing, the children’s guardian ad litem forcefully and passionately argued that termination of Mother’s parental rights was in the best interest of his clients and wards, the children. The trial court agreed, and our review of the record confirms that the trial court was correct in determining that termination was in the children’s best interest.

### ***V. Conclusion***

For the aforementioned reasons, the judgment of the trial court terminating Mother’s parental rights upon the alleged statutory grounds is affirmed. Costs on appeal are assessed to the Appellant, M.L.

SHARON G. LEE, JUDGE